



**Representative Sheldon Wasserman**

**Testimony Before the Assembly Committee on Health and Health Care Reform**  
**In Support of Assembly Bill 713 - February 5, 2008**

Good morning, Chair Vukmir and fellow committee members. I appreciate the chance to testify in support of Assembly Bill 713 today.

The high cost of health care threatens the well being of Wisconsin families and businesses. Prescription drugs account for over 10 percent of the total amount Americans spend on health care. Patients should not have to choose between paying for medicine and paying for food.

A number of national retailers like Target and Wal-Mart offer generic prescription drugs for as little as \$4 and \$9 for a 30 day supply. These programs are easing the financial burden on individuals without insurance. Unfortunately, Wisconsin's minimum markup law prevents many of these medicines from being sold at the reduced price. Over 10 percent of the 382 drugs on Target's discounted prescription program cannot be sold at reduced prices in Wisconsin.

This outdated law forces Wisconsin citizens to pay more than our neighbors for many retail products. It is one thing to make people pay more for gas, but it is unconscionable to force them to pay more for their medicines.

U.S. Magistrate Judge William Callahan recently declared that Wisconsin's Unfair Sales Act, or "minimum markup law" is unconstitutional, at least as it applies to the sale of motor vehicle fuels. The real world implications of this ruling may not be clear for some time as no injunction was issued and an appeal is likely.

Although I have signed onto legislation that would repeal the minimum markup law in the past, I know that the chances of passing a bill are slim. In the meantime, I hope you will quickly pass this legislation to exempt prescription drugs from the provisions of the Unfair Sales Act.

Most national prescription drug retailers have said these promotions have not affected their businesses because 95 percent of their customers already pay \$5 or less in co-pays for the drugs. I support policies which help ensure that independently owned pharmacies are not harmed by unfair competition. I have been told the impact on small pharmacies will not be significant, and I do not believe that forcing patients to pay more for life saving drugs is the way to help support locally owned businesses.

It is time to stop forcing our constituents to pay artificially high prices for their medicines. Passing this bill will help real people with real problems, just think of the savings that this bill could provide to HSA participants. Thank you for your time and consideration. I am happy to answer any questions you may have.

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## Repeal law that hurts consumers

A Wisconsin State Journal editorial  
November 27, 2006

When a state law tells Wisconsin consumers they cannot take advantage of a retailer's offer to cut the price of generic prescription drugs, it's time to change the law.

Minneapolis-based retailer Target tried last week to bring to Wisconsin its nationwide plan to offer 140 generic drugs at \$4 prices in its pharmacies. But Wisconsin's minimum markup law, also called the Unfair Sales Act, stopped Target dead in its tracks.

The law, with a few exceptions, prevents retailers from selling products at prices below the retailers' costs.

Wisconsin has been one of only 10 states prohibiting Target's price cut. So, while most of the nation's consumers have been able to buy their generic drugs for \$4 at Target, Wisconsin consumers have not.

That is a perverse result for a law promoted as a way to maintain vigorous competition.

The consequences grew even more perverse when you consider that Wal-Mart is rolling out a similar price reduction program for generic drugs, and Wisconsin's law *will* apparently allow Wal-Mart's price cuts to take effect, on grounds that Wal-Mart's costs are lower than Target's.

Wal-Mart announced Monday it will start selling \$4 drugs in Wisconsin today. So the state will permit Target to match Wal-Mart.

That's right. Target can sell generic drugs for \$4 only if Wal-Mart does it first.

Welcome to the crazy world of government control of the marketplace.

Wisconsin's minimum markup law has long been an unnecessary limit on the free market. Predatory pricing provisions in federal anti-trust law already prohibit retailers from using below-cost pricing to harm competition or consumers. That's the right approach.

The state law veers in the wrong direction by prohibiting below-cost pricing regardless of the effect on consumers or overall competition.

Consequently, Wisconsin was subject to situations such as the ban on

Target's price cut that actually harmed consumers.

The generic drug pricing case has answered two important questions about Wisconsin's minimum markup law.

- Does the law benefit consumers?

No. It prevents or at least delays lower prices.

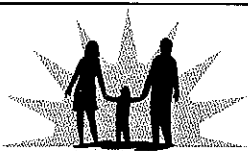
- Does the law promote competition?

No. It handed pricing control to Wal-Mart, at the expense of the competition.

When they return to the state Capitol in January, lawmakers should respond by repealing Wisconsin's minimum markup law once and for all.

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## **Wal-Mart's \$4 Prescription Drug Program Saves Customers in Wisconsin More than \$9 Million**

One year after the launch of its innovative \$4 prescription program, Wal-Mart estimates that the program has saved pharmacy customers more than \$610 million (\$613,581,398.70 as of September 24, 2007). The low-cost offering, which was launched in September 2006, was the company's first step in bringing affordable medicines to America's working families.

The program will be expanded in two key ways:

- **More medicines covering more categories** – Important prescription drugs have been added to the \$4 program covering glaucoma, Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder (ADD/ADHD), fungal infections and acne. Fertility and prescription birth control will also be included at \$9, compared to national average prices ranging from \$24 to \$30 per month and saving women an estimated \$15 to \$21 per month – \$180 to \$250 annually.
- **Faster savings on new-to-market generics** – One month ago, the antifungal medicine Lamisil® had an average price of \$337.26. The generic medicine, terbinafine, is now available through Wal-Mart, Sam's Club and Neighborhood Market pharmacies for just \$4 for a commonly dispensed quantity up to a 30-day supply, saving customers \$333.26 per month and approximately \$3999 per year. Carvedilol, the generic for Coreg® which a month ago cost \$119, will now cost \$4 for a commonly dispensed quantity up to a 30-day supply, saving customers \$115 per month and approximately \$1,300 per year.

Wal-Mart is adding 24 new \$4 generic medications to the program; and three \$9 prescriptions. These medicines are available at commonly dispensed quantities up to a 30-day supply.

Once again, Wal-Mart is applying its basic business model to drive down costs and bring solutions to the healthcare system.

### **Key Components of the \$4 Program:**

- ✓ Since the launch of Wal-Mart's \$4 prescription program in September 2006, we estimate that we've saved Wal-Mart, Sam's Club and Neighborhood Market pharmacy customers more than \$610 million dollars (\$613,581,398.70 as of September 24, 2007). These prescriptions represent approximately 40 percent of prescriptions filled in Wal-Mart, Sam's Club and Neighborhood Market pharmacies.
- ✓ The addition of new medicines will continue to drive down healthcare costs. Through the program, the company has provided customers in 16 states alone with savings of more than \$396 million combined or more than \$15 million per state. A state-by-state breakdown is available at <http://www.livebetterindex.com>.
- ✓ States with high levels of savings include: Texas (\$79,471,091); Florida (\$43,969,981); North Carolina (\$28,470,880); Georgia (\$24,924,421); Missouri (\$24,589,118); Ohio (\$23,048,247); Illinois (\$22,614,573); Indiana (\$20,524,690); Arkansas (\$20,052,541); Oklahoma (\$18,804,293); Tennessee, (\$18,318,774); Louisiana (\$18,137,638); Pennsylvania (\$18,025,112); Kentucky (\$17,198,579); Virginia (\$16,148,952); and California (\$15,355,893).
- ✓ Wal-Mart's affordable prescription drug program will now cover commonly prescribed doses of generic medications in the following categories – fungal infections, glaucoma, prescription birth control, mental health (including ADD/ADHD), fertility and acne.



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- ✓ To mark the program's one year anniversary Wal-Mart has added 24 new \$4 prescriptions and three \$9 medications to our low cost program. With these new additions Wal-Mart, Sam's Club and Neighborhood Market pharmacies can offer customers 361 generic prescriptions at affordable prices. These 361 products are made up of 157 medication compounds and are now available at Wal-Mart pharmacies nationwide. With the changes announced today, \$4 prescriptions are available for most commonly treated medical conditions. In fact, the program now offers a quality prescription product for up to 95 percent of the prescriptions written in the majority of therapeutic categories. The full list is available at [www.walmart.com/pharmacy](http://www.walmart.com/pharmacy).
- ✓ New generic prescription offerings include: timolol maleate (glaucoma), terbinafine (antifungal), carvedilol (cardiac), and three \$9 women's medications – including a generic birth control for Ortho Cyclen® and Ortho Tri-Cyclen®, and a fertility product, clomiphene.
- ✓ The program offers \$4 pricing to all pharmacy customers, including the uninsured, who have a prescription from a doctor that can be filled with a covered generic. Insurance plans will be accepted, and customers do not need to fill out any additional paperwork. In California, Colorado, Hawaii, Minnesota, Montana, Pennsylvania, Tennessee, Wisconsin and Wyoming the three \$9 medications are priced higher due to state laws.
- ✓ Certain generic drugs are priced higher than \$4 in some states. Customers in those states – including California, Colorado, Hawaii, Minnesota, Montana, Pennsylvania, Tennessee, Wisconsin and Wyoming – should see their Wal-Mart pharmacist or [walmart.com/pharmacy](http://walmart.com/pharmacy) for details.
- ✓ The program launched in Tampa, Florida on September 21, 2006 and expanded to 49 states by November 28, 2006 (Wal-Mart does not operate in-store pharmacies in its North Dakota stores). We have also introduced a similar discount program in our stores in Puerto Rico, Mexico and Brazil.
- ✓ Our pharmacists take their role in counseling customers about the safe and effective use of prescription medicines very seriously. Patients wishing to switch from brand-name to generic prescription medicines should do so only after consulting their physician or pharmacist first.

**Impact on Wisconsin:**

- ✓ The \$4 prescription drug program has saved Wal-Mart pharmacy customers in Wisconsin an estimated \$9,164,481.92 since its launch in 2006. Generally state savings are higher in states where Wal-Mart, Sam's Club and Neighborhood Markets have more pharmacies.
- ✓ The \$4 program provides a solution for the more than 500,000 uninsured Wisconsin residents (according to the Kaiser Family Foundation) who may presently avoid filling prescriptions and remain untreated.
- ✓ Medicaid patients see no change with this program. Their co-pays remain the same, and we estimate that the program will save the state's Medicaid program tens of thousands of dollars annually.
- ✓ The low-cost prescription program is especially important to more than 850,000 Medicare beneficiaries in Wisconsin – seniors and the disabled – by giving them a lower-cost option if they reach the "doughnut hole" gap in their Medicare Part D coverage. Medicare beneficiaries have to pay 100 percent of their costs in that coverage gap, which occurs after their annual drug spending hits \$2,400 and continues until total expenses hit \$5,421.25.
- ✓ Certain drugs are priced higher than \$4 in some states – including California, Colorado, Hawaii, Minnesota, Montana, Pennsylvania, Tennessee, Wisconsin and Wyoming. Due to state laws, the newly added women's



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medications are not available at \$9 in those states. Customers in these states should see their Wal-Mart pharmacist or visit [www.walmart.com/pharmacy](http://www.walmart.com/pharmacy).

### Public Impact:

- ✓ Wal-Mart's expanded prescription drug program will continue to provide an affordable solution for those without health insurance. According to a recently released report by the U.S. Census Bureau (Income, Poverty and Health Insurance in the United States: 2006, August 2007), there are 47 million uninsured Americans, 20.5 percent of whom are African-American and 34.1 percent of whom are Hispanic. Nearly 30 percent of \$4 prescriptions are filled by uninsured customers, who without the program, may have avoided filling prescriptions and remained untreated.
- ✓ A report from the Robert Wood Johnson Foundation found that uninsured adults with chronic health problems face substantial problems and challenges accessing the health care they need. The \$4 program helps address this gap in care and provides access to prescription drugs that will help improve their health.
- ✓ The low-cost prescription drug program is especially important to Medicare beneficiaries – seniors and the disabled – by giving them a lower-cost option if they reach the "doughnut hole" in their Medicare Part D coverage. Medicare beneficiaries have to pay 100 percent of their costs in that coverage gap, which occurs after their annual drug spending hits \$2,400 and continues until total expenses hit \$5,421.25
- ✓ According to the Kaiser Family Foundation, American pharmacies filled more than 3 billion prescriptions in 2006 at a retail cost of more than \$192 billion. Generic drugs contain the same active ingredients as their "brand-name" counterparts and are equally effective, but cost significantly less. Generic medicines account for 63 percent of all prescriptions dispensed in the United States, according to the Generic Pharmaceutical Association.

### What Others Are Saying:

- ✓ "Wal-Mart's \$4 prescription drug program is already having a major impact at a time when rising healthcare costs are on everyone's mind," said Paul A. London, former Deputy Under Secretary of Commerce for Economics and Statistics in the Clinton Administration and author of The Competition Solution: The Bipartisan Secret behind American Prosperity. "This program has the potential to lower what the country pays for prescription drugs by tens of billions of dollars annually as customers learn of the program and as competitors match it. Wal-Mart is using its buying power and sales volume as it has in other areas to lower prices from drug makers, making affordable healthcare available to more Americans." (9/27/07)
- ✓ "Annual inflation in drug costs is at the lowest rate in the three decades since the Labor Department began using its current method of tracking prescription prices...Economists say the slowdown has come about because more people are turning to generics and because generic versions of some of the most common drugs have recently come on the market...Another factor could be the so-called Wal-Mart effect. Last fall, Wal-Mart began offering many generic prescriptions at \$4 a month....Other retailers have followed with their variations. (*The New York Times*, 9/21/07)
- ✓ "One customer who was drawn to Wal-Mart by the generic promotion is Bernadine Peterson, a nurse who lives in Westbury, N.Y. Ms. Peterson said she started using the Wal-Mart pharmacy four or five months ago because of the \$4 generics. As a result, she said, she was saving \$100 a month, reducing her monthly prescription bill to \$200." (*The New York Times*, 9/21/07)



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- ✓ "The \$4 prescription plan Wal-Mart has started is a major help. No matter what the reader may think of Wal-Mart...I think it has helped the Free Clinic patients more than any single organization," said volunteer doctor Jud Kilgore in a guest column about the Ithaca Free Clinic. (*Ithaca Journal* (NY), 8/2/07)
- ✓ "Wal-Mart, Target, Kmart and other pharmacies are attempting to deliver some relief. Last fall, Wal-Mart launched a discount prescription program for more than 300 medications, and the other retailers followed suit...Making medicine affordable is critical to most families. It can mean the difference between living healthy lives and struggling to survive. At many pharmacies, reasonably priced generic drugs are just what the doctor ordered," wrote retired columnist Claude Lewis in an op-ed about drug costs. (*Philadelphia Inquirer*, 7/18/07)
- ✓ "Most of the prescriptions sold in this country are generic; their average cost is about \$28 a month, and particular drugs can run much higher. Pushing those prices down across the industry would help dampen the inflation of health care costs, which often runs four times the ordinary inflation rate. And if widely publicized low costs encourage more patients to seek generic alternatives to brand-name drugs, that, too, will control the nation's monstrous medical bills. In the meantime, Washingtonians will be seeing Wal-Mart's \$4 drugs and the responses that are bound to follow from its competitors. If this is a marketing ploy, we need more such ploys." (*The News Tribune* (WA) Editorial, 11/20/06)
- ✓ "This announcement of \$4 prescription drugs is significant," South Carolina Gov. Mark Sanford said. "It's about the cost of health care in South Carolina. It's about the cost of health care in America. Affordability is one of the key issues we face when it comes to health care in South Carolina and elsewhere...Health-care problems won't be solved with a single silver bullet but with 'lots of little silver bullets,'" he said. (*Greenville News* (SC), 11/17/06)
- ✓ "When there are retailers competing by lowering prescription drug costs for consumers, that's a good deal, and we want more of that," said Deirdre Cummings, MASSPIRG's consumer program director. "But the biggest costs for consumers are the brand-name drugs. To the extent that this could be the beginning of a price war on all prescription drugs, that's good." (*Boston Herald* (MA), 11/17/06)
- ✓ Oklahoma customer Maury Dean got a prescription for \$4 Thursday that usually costs him \$13. "It's great because these are medicines I'll probably be on the rest of my life." (*The Oklahoman* (OK), 11/17/06)
- ✓ "The high cost of prescription drugs is of enormous concern to all of my constituents, and anything that any company can do to offer reasonably priced prescription drugs will be of great benefit," Massachusetts State Representative David Linsky of Natick (D) said. (*Boston Globe* (MA), 11/16/06)
- ✓ Chris Rodgers needs a lot of medications. "I just got on disability ...you have to eat, pay your electric bill, you have to make a decision and sometimes your medicine has to go," Rodgers said. "You pray everyday for a day that something's gonna come around and help you; this will be it for me." (*KXLY* (WA), 11/16/06)

For further information on the program, customers can call 1-800-WALMART,  
log-on to [www.walmart.com/pharmacy](http://www.walmart.com/pharmacy), or visit their local Wal-Mart or Sam's Club pharmacy.

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